

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2003-511

August 5, 2003

Energy New England, LLC
Application for License to Operate as a
Competitive Electricity Provider

ORDER GRANTING LICENSE

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

I. SUMMARY

In this Order, we license Energy New England, LLC to operate as a competitive electricity provider furnishing aggregator/broker services in Maine pursuant to Chapter 305 of the Commission's Rules.

II. APPLICATION

On July 9, 2003, Energy New England, LLC (ENE) applied to the Commission for a license to operate in Maine as a competitive electricity provider, as provided in Chapter 305.

A. Type of Service Proposed

ENE proposes to act as an aggregator or broker for electric service provided to the public at retail. ENE's application states that the proposed licensee plans to act as an "electricity broker" facilitating and/or arranging for the purchase and sale of electricity to small, medium and large commercial and industrial electricity customers in all distribution service areas in Maine.

B. Fee Paid

With its application, ENE paid a \$100 fee to the Commission, as required by section 2(C)(5) of Chapter 305.

III. FINANCIAL ISSUES

A. Security

ENE will operate as an electricity broker/aggregator in Maine. Pursuant to section 2(B)(1)(a)(i) of Chapter 305, ENE does not have to furnish a security instrument to the Commission.

B. Showing of Professional and Financial Capability

ENE will operate as an electricity broker/aggregator in Maine; accordingly, ENE is required to demonstrate its professional responsibility pursuant to section 2(B)(1)(b) of Chapter 305. ENE filed information to demonstrate its professional responsibility. We have reviewed that information and find that it complies with the requirements of Chapter 305. ENE stated that it will not hold retail consumer funds, and accordingly is not required to demonstrate its financial capability pursuant to section 2(B)(1)(b) of Chapter 305. If ENE wishes to hold consumer funds in the future, it must first obtain authority from the Commission.

IV. TECHNICAL ISSUES

A. Showing of Technical Capability

ENE will operate as an electricity broker/aggregator in Maine; accordingly, ENE is required to demonstrate its technical fitness to conduct its proposed business pursuant to section 2(B)(2)(c) of Chapter 305. ENE filed information to demonstrate its technical capability. We have reviewed that information and find that it complies with the requirements of Chapter 305.

Section 2(B)(2)(b) of Chapter 305 requires an applicant to demonstrate that it has the technical ability to secure generation or otherwise obtain and deliver electricity meeting all applicable requirements for the bulk power system control area in which the applicant would provide service. ENE filed information to demonstrate its technical capability to meet that requirement within the NEPOOL/ISO-NE portion of the Northeast Power Coordinating Council control area. We have reviewed that information and find that it complies with the requirements of Chapter 305. ENE also documented that it will meet the NEPOOL transaction provisions required by section 2(B)(2)(b)(ii) of Chapter 305.

B. Resource Portfolio

ENE will operate as an electricity broker/aggregator in Maine. Pursuant to section 2(B)(4) of Chapter 305, ENE is not required to demonstrate an ability to meet the resource portfolio requirement of 35-A M.R.S.A. § 3210 and the portfolio requirement reporting rules in Chapter 311 of the Commission's rules.

V. CONSUMER PROTECTION ISSUES

A. Showing of Fitness

In its application, ENE provided information required by Chapter 305, section 2(B)(3), related to enforcement proceedings and consumer complaints. We have reviewed that information and find that it meets the requirements of Chapter 305.

B. Ability to Comply with Consumer Protection Rules

ENE will operate as an electricity aggregator/broker in Maine. Pursuant to section 2(B)(6) of Chapter 305, ENE is not required to demonstrate its ability to comply with applicable consumer protection requirements.

C. Do-Not-Call List

Chapter 305, section 4(I) states that “[t]he Commission will maintain or cause to be maintained a ‘Do-Not-Call’ list of customers who have requested -- orally, in writing, or by commercially accepted electronic means -- that they not receive telemarketing calls from competitive electricity providers.” We require that licensees use do-not-call list mechanisms already in place nationally to satisfy that requirement. To the extent that it telemarkets to Maine consumers, ENE shall comply with the following requirements.

ENE must comply with the requirements of the Telephone Consumer Protection Act,¹ the Telemarketing and Consumer Fraud and Abuse Prevention Act,² and related rules of the Federal Communications Commission³ and Federal Trade Commission.⁴ ENE must comply with those requirements and must maintain its own do-not-call list as required by those laws and rules, for all intrastate and interstate telemarketing of Maine consumers, including both residential and business consumers. ENE shall not telemarket to Maine consumers on that list, as required in Chapter 305 section 4(I)(1). ENE shall update its do-not-call list at least monthly, and maintain copies of that list for at least six months. ENE shall provide a copy of that list to the Commission upon request.

Further, each month, ENE must obtain listings of Maine consumers who have arranged to be included on the do-not-call list maintained by the Telephone Preference Service of the Direct Marketing Association, Inc.⁵ ENE shall not telemarket to Maine consumers on that list, as required in Chapter 305 section 4(I)(1).

D. Other Consumer Protections

¹47 U.S.C. § 227

²15 U.S.C. §§ 6101-6108

³47 CFR 64.1200

⁴FTC Telemarketing Sales Rule, 16 CFR Part 310

⁵Telephone Preference Service, Direct Marketing Association, Inc., P.O. Box 9014, Farmingdale, NY 11735-9014

Competitive electricity providers must provide certain protections to consumers. As a condition of licensing, ENE:

1. shall obtain a consumer's authorization before serving the consumer;
2. may not release to any other entity, other than for purposes of debt collection or credit reporting pursuant to state and federal law or to law enforcement agencies pursuant to lawful process, any personal information regarding a customer, including name, address, telephone number, usage and historical payment information, without the consent of the customer;
3. must comply with the provisions of the Maine Unfair Trade Practices Act, Title 5, chapter 10;
4. may not collect or seek to collect unreasonable costs from a customer who is in default;
5. must comply with all applicable provisions of the federal Equal Credit Opportunity Act, 15 United States Code, Sections 1691 to 1691f;
6. may not initiate a telephone solicitation call to a consumer who has notified the competitive electricity provider of the consumer's wish not to receive telephone solicitation calls made by or on behalf of the competitive electricity provider;
7. must provide at least once annually to a customer any information disclosures required by the Commission by rule; and
8. must comply with any other applicable standards or requirements established by the Commission by rule.

35-A M.R.S.A. § 3203(4-A).

VI. ADDITIONAL PROVISIONS

ENE must comply with all applicable requirements and limitations in Chapter 305 not explicitly waived in this Order. ENE must also comply with all requirements and limitations in other applicable Commission rules, including any applicable future changes in Maine laws and Commission rules, and in other parts of this Order.

VII. ORDERING PARAGRAPHS

Accordingly, we

1. license Energy New England, LLC to operate as a competitive electricity provider pursuant to Chapter 305 of the Commission's Rules; under this license, Energy New England, LLC may operate only as an aggregator/broker in Maine;
2. order that Energy New England, LLC may not hold retail consumer funds;

3. order Energy New England, LLC to comply with all Do-Not-Call List requirements contained in Part V(C) of this Order to the extent that it telemarkets to Maine consumers;
4. order Energy New England, LLC to observe all other consumer protection requirements contained in Part V(D) of this Order; and
5. order that this license is effective on the date of this Order and valid until revoked by the Commission pursuant to section 3(A)(4) of Chapter 305, or abandoned by the licensee pursuant to sections 2(C)(9) and 2(C)(11) of Chapter 305 of the Commission's Rules.

Dated at Augusta, Maine, this 5th day of August, 2003.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Diamond
Reishus

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.